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Omnibus Trade Act

In August 1988, after three years of intense struggle, the US Congress passed the Omnibus Trade and Competitiveness Act and President Reagan signed it into law. The origins of the Omnibus Trade and Competitiveness Act of 1988 can be traced to a number of factors, the most immediate of which was the sharp deterioration of the US BALANCE OF TRADE beginning in the late 1970s. To some, this deterioration represented a fundamental change in the competitiveness of American goods in comparison to foreign products. Others blamed excessively high foreign barriers to US exports and inadequate US barriers to imports.

In the face of increasingly strong foreign competition, organized labour moderated its demands for higher wages and even accepted wage cuts in some important sectors. As unions called for government action, they were joined by industries suffering through the recession of the early 1980s, especially those that had been declining relative to foreign competitors over many years.

Officials of the Reagan administration, along with some congressmen, worked hard to soften the proposals to erect import barriers and to regulate international business practices. By the end of the summer of 1988, congressional negotiations had produced a bill with complex and sometimes contradictory provisions. While most politicians were not overly enthusiastic about the legislation, they did not show open opposition.

As with many large pieces of legislation, most of the 1988 act contained technical and definitional material that was important only at the margin.

1 *Trade relief*: Under the act, industries seriously injured by imports could receive some protection if they were willing to make a 'positive adjustment' to foreign competition. Firms obtaining such relief would have to agree to a five-year plan to restore their competitiveness.
2 *Worker assistance*: The act created a $1 billion retraining programme (financed by an import fee) to help workers displaced by imports. Also, worker rights in foreign countries are one of the factors in determining unfair trade practices.

3 *Intellectual property*: The act has measures to enhance the protection afforded by US patents, copyrights and other intellectual (industrial) property rights. It strengthens the ability of US companies to block imports – without the need to prove damages – if patents are violated.

4 *Use of the metric system*: Under the act, the government is required to use the metric system of measurement in its procurement, grants and other business-related activities. However, private firms remain free to decide whether or not to convert to the metric system. The United States, Burma and Brunei are the only countries in the world that have not gone metric. The lack of metric product designs and labelling constrains US exports, amounting to a self-imposed NON-TARIFF BARRIER (NTB).

5 *Negotiating authority*: The act grants to the president authority to continue negotiations under the URUGUAY ROUND sponsored by the GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT). Here, the intent of the United States was to open foreign markets for banking, insurance and other services; to gain protection for patents, trademarks, copyrights and other intellectual property rights; to liberalize rules pertaining to direct foreign investment, and to cut tariffs by up to 50 per cent. Furthermore, the act established a procedure – voting up or down without any amendments – to expedite the ratification by Congress of Uruguay Round agreements submitted by 1 June 1991.

6 *Competitiveness*: The act does little to improve US competitiveness (as usually defined). It makes mention of education reforms to increase the language and technical skills of US workers and managers, but provides only modest funding for that purpose. It calls on the National Bureau of Standards (renamed the National Institute of Standards and Technology) and other government agencies to allocate more resources to the transfer of government technology to private companies.

The controversy over the 1988 Omnibus Trade Law centred around two other provisions. One, requiring employers to comply with particular rules about notice of plant closings, was ultimately stripped from the trade law and passed separately; the other, originally referred to as the 'Gephart amendment', is now known as SUPER 301. Super 301 was actually the culmination of a trend in US trade legislation that began in the early 1960s:

1 *Trade Expansion Act of 1962*: This act gave the president broad discretion to retaliate against 'unjustifiable' foreign trade barriers (with greater authority to retaliate against agricultural barriers) and also limited authority to retaliate against 'unreasonable' barriers. The law supplemented but did not replace Section 350 of the Tariff Act of 1930 (enacted under the Trade Agreements Act of 1934).

2 *Trade Act of 1974 (Sections 301–2)*: The 1974 act expanded the president's discretionary authority to retaliate against both unjustifiable and unreasonable foreign barriers, with no distinction made between agricultural and non-agricultural goods. It replaced Section 252 of the 1962 act, extended coverage to services associated with international trade, authorized action against foreign export subsidies and required the United States Trade Representative (USTR) to submit reports to Congress every six months.

3 *Trade Agreements Act of 1979 (Sections 301–6)*: This act left the presidential authority unchanged. It did, however, clarify applicability of statute to services 'whether or not associated with specific products', established more detailed procedures for investigations (including time deadlines for action), required consultations with foreign trade partners and use of available dispute settlement procedures.

4 *Trade and Tariff Act of 1984 (Sections 301–7)*: While the discretionary authority of the president was unchanged, the USTR was now permitted to self-initiate investigations and recommend action to the president. The

major change from previous acts was the authorization to retaliate in the services sector. The act explicitly included, for the first time, coverage of INTELLECTUAL PROPERTY RIGHTS (IPRs) and FOREIGN DIRECT INVESTMENT (FDI), and required the submission to Congress of a National Trade Estimates report.

5 *Omnibus Trade and Competitiveness Act of 1988 (Sections 301–10)*: This act shifted the authority to retaliate from the president to the USTR, subject to the specific presidential direction (if any), and made retaliation against unjustifiable practices mandatory (but with many loopholes permitting considerable discretion). The major changes from the previous law were the establishment of Super 301 which required USTR in 1989–90 to identify trade priorities (including designating 'priority countries and practices' to be investigated under 301), the establishment of Special 301 to promote more aggressive assertion of IPRs and the establishment of new deadlines for action in cases involving GATT dispute settlement or intellectual property.

For most economic commentators, Super 301 was the epitome of unenlightened economic policy. Whole sessions of the GATT Council have been devoted to criticizing this provision of US trade law and nearly every conference on international trade held in the next several years debated just how bad the new provision was. Outside the United States, opinions about Super 301 ranged from the belief that it is merely a major impediment to liberal international trade to the contention that it is an absolute bar to new liberalization.

Many US politicians and businessmen generally have an equally strong, but very different, view of Super 301. They have celebrated it as the one meaningful weapon in the US arsenal for protecting US commercial interests from foreign attack – a 'crowbar' to open foreign markets to US goods and a shield against 'unfair' foreign competition. To date, neither the fears about this section nor the hopes for it (or for the act in general) have been justified. Notwithstanding its potential, Super 301 has not played a very important role. It does, however, reflect a new political reality that may at some time significantly change US trade policy.

This political change appears to have come about as a result of congressional concerns that the trade policies of the Reagan administration were incapable of redressing the decline in US exports and the perception that other countries were not 'playing fair'. In this regard, Reagan and his appointees were viewed as particularly inattentive to important congressional supporters' concerns for their own commercial success. The combination of strong foreign policy interests and strong pro-market rhetoric gave the Reagan administration the aura of committed free-traders, although from its inception the administration's action demonstrated a willingness to protect US businesses from overly successful foreign competition. However, policy-makers on Capitol Hill demonstrated less pragmatic political compromise and more resistance to trade protection than congressional consensus would have dictated.

Although the more straightforward demands for protection were not often acted on, there was considerable congressional support for arguments that US markets should not remain open to products from countries that did not play by free-trade rules. Executive officials generally counselled that infractions of the international rules were subject to adjudication within GATT. The United States had, after all, agreed as a contracting party to follow GATT rules, including the admittedly weak and frustrating dispute-resolution process. Failure to invoke that process before imposing trade sanctions would be to risk retaliatory sanctions from other nations.

Many congressmen, however, saw the administration's references to US GATT obligations as mere cover for resistance to mercantile protection. In fact, other nations disregarded their GATT obligations – often to the disadvantage of the United States – and GATT had shown itself to be quite toothless, especially since its sanctions depend on the transgressor's consent.

The proposed new laws therefore stressed mechanisms to force executive officials to adopt measures to protect politically important commercial interests without relying on appeals to GATT. Some proposals would have expressly linked US government action to the US merchandise trade-balance. Others would have responded to specific bilateral trade-balances. All the proposals substantially reduced the scope for administrative discretion. Opposition by the Reagan administration and by sympathetic congressmen blocked these proposals.

The three related provisions that did achieve the necessary consensus, adopted a different approach involving three key elements. First, the new provisions were targeted against the behaviour of other governments in their home markets, instead of focusing on the competition provided by imports in the United States. Second, the provisions require public executive action on a specific timetable to identify the foreign miscreants ('priority' countries). Third, the provisions restricted the ambit of permissible responses, but maintain a sphere for administrative discretion both in designating the priority countries and in taking action against them.

More specifically, the USTR must publicly identify the nations that violate US open-trade norms and, having done so, must describe the course of action being taken to redress those violations. The general provision, commonly known as Super 301, is now contained in Sections 301 through to 310 of the amended Tariff Act of 1930.

Two related provisions, Section 182 (Special 301) and Sections 1,374 through to 1,380 of the Omnibus Trade and Competitiveness Act of 1988 require similar action, focused respectively on US trading partners' treatment of IPRs and telecommunications trade. Together, these Super 301 provisions constitute a 'sunshine act' for trade policy.

The Super 301 provisions have had the intended effect of forcing the USTR to label specific trading-partner nations as unfair traders and to engage in negotiations with those nations to end the identified unfair practices. As predicted by the advocates of Super 301, these negotiations – including the threat of being labelled as a priority country – have produced some changes in other governments' formal policies; as the critics of Super 301 predicted, US implementation of these provisions spurred nearly unanimous international condemnation and complicated negotiations in GATT's Uruguay Round – however, both effects have been quite modest.

The statutory deadline for the USTR's first list of priority nations and priority practices under Super 301 was 28 May 1989. In the months leading up to this date, several nations engaged in bilateral negotiations with the United States to avoid inclusion on the list. The United States' trading partners, most notably the Republic of Korea, agreed to a number of formal undertakings. Just before issuance of the first Super 301 list, the Korean government cut its average tariff in half, liberalized import restrictions in many different sectors and agreed to abandon a set of 'localization' rules that had frustrated importers.

Many of these changes might have occurred without the prod of Super 301, but clearly the Super 301 'naming' process accelerated some concessions and was probably a conclusive consideration in others. Despite these concessions, the United States' trading partners still impose both direct and indirect constraints on trade that violate international agreements or are otherwise 'unfair'.

As the May 1989 deadline approached, debates within the administration revealed a number of possible ways to compile the list. One was to focus on priority practices that impeded trade and to list the countries, including the United States, which engaged in these practices without targeting any nation as a priority country. Given the breadth of restrictive international practices, their widespread use and the inclusion of nearly all major trade restrictive practices on the agenda for multilateral discussion in the Uruguay Round, this approach would arguably have complied with the 1988 trade act without threatening the GATT talks. A second possibility was to include a very large number of priority

countries on the initial list, with the expectation that progress made in the Uruguay Round would allow the US trade representative, in drawing up subsequent lists, to proclaim that the countries no longer deserved priority status. Other approaches were also considered.

The serious controversy centred on Japan. Several prominent US officials pushed hard to keep Japan off the Super 301 list. They cited the low level of formal Japanese trade barriers, the large number of trade concessions the Japanese made in recent bilateral negotiations, the anticipated sensitivity of the Japanese to being named as 'unfair traders' (the Japanese explanation of priority-country status) and the special strategic relationship between Japan and the United States (including US dependence on Japanese financing to fill the gap between US savings and domestic investment). Other officials pressed equally hard to include Japan, largely on the basis of expected congressional reaction. In fact, some members of Congress publicly declared that Super 301 was written with Japan in mind and would be rewritten if Japan were not listed as a priority country. Indeed, the Omnibus Trade Act included several provisions expressing congressional concern over the long-run US trade imbalance with Japan.

In the end, a compromise was reached. The Super 301 list designated India and Brazil as priority countries. Although it also included Japan, concern with Japanese trading policies was confined to three specific areas: telecommunications, satellites and forest products. Reaction to the list was predictable. Most US politicians declared the list a good start on the Super 301 process, but noted that they would be watching carefully to assure vigorous follow-up by the USTR. The list was seen in the rest of the world as a political statement signalling a compromise between the administration's domestic and international concerns. As might be imagined, the world's trading nations almost in unison sharply denounced the US action. Japan expressed outrage that the United States would treat so close a friend as if it were a dangerous enemy, and India complained that the United States was simply acting as a bully. Critics uniformly stated that by carrying forward the Super 301 process, the USTR had jeopardized the Uruguay Round.

The USTR noted that the Super 301 process in no way represented unilateral action. After all, naming countries to the priority list was simply the precursor to negotiating with those countries. The countries named, however, showed little enthusiasm for negotiating at the point of the Super 301 gun. That said, the public furore over Super 301 was not matched by similar difficulties at the operational level. Although India, in fact, refused to enter bilateral discussions, it did not withdraw from the multilateral talks. The various working groups in Geneva continued to undertake their appointed Uruguay Round talks and successfully negotiated a new treaty, establishing the WORLD TRADE ORGANIZATION (WTO).

Evaluating the Omnibus Trade and Competitiveness Act is difficult, since a good counterfactual of what might have happened in its absence is hard to construct. Clearly the act did not contribute much to the US balance-of-payments position, but anyone with the slightest familiarity with macro-economics would have known this from the start – the imbalances simply reflected the country's low saving rates and high fiscal deficits, and trade practices contributed little one way or another to the external imbalances. Probably the act's greatest effect was symbolic. It signalled a change in the tone of US trade law. Before 1988, numerous official actions (both legislative and executive) had shown US trade law to be something other than a bold commitment to FREE TRADE. Indeed, US history reveals strong support both for more open rules and for tailoring trade rules to protect some US producers' interests against others and against consumers' interests. The dominant theme of US trade law over the past fifty years, however, is a commitment to open trade. Despite all the constraints imposed on agricultural trade, textiles, sugar and steel, and despite the peculiarly American reluctance to embrace strong international structures for governing trade, the dominant emphasis was on reducing barriers to trade. Modifications of basic US

law during the 1950s, 1960s and 1970s generally provided greater openness to trade, not less, with protectionist measures (such as the MULTI-FIBRE ARRANGEMENT (MFA) or the steel 'trigger-price' programme) being exceptional departures from the norm.

The 1988 act does not so much change the law as mark a different preference for its ultimate direction. The act does not direct the USTR to declare any nation's actions unfair or, having done so, to respond with particular penalties, but it clearly puts on the USTR the burden of proof that it is doing enough to combat unfair trade practices. The act does not command trade sanctions against Japan, but expresses Congress' sense that Japan has not played fairly and that it deserves to be made to pay a price if it will not play by US rules. The act does not effectively change the decisional core of trade adjudications on DUMPING or SUBSIDIES or escape-clause actions, but it announces congressional interest in strengthening those mechanisms to protect domestic industry.

From one perspective, the change in tone is puzzling. Of course, the United States in 1988 (and today) continued to run large merchandise trade deficits and several important industries were (and are) facing a long-term contraction in response to changes in international competition and consumers' tastes. But the 1988 trade act also was adopted when almost all US major trading partners were liberalizing their trade rules (making it easier to sell US exports) and when US productivity gains in manufacturing were running ahead of all the countries in the ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) except Japan.

The act's tone, however, accurately reflects its time. It is one of apprehension for the future. It is a challenge to the executive branch and to US trading partners to satisfy the act's supporters that changes in the global economy will not harm the sectors of US enterprise most vulnerable to those changes. In the final analysis, the act has resulted in little other than creating bad feeling towards the United States.

Further reading

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open economy

An open economy is one that is engaged in foreign trade. International trade flows comprise not only goods but, to an increasing extent, also traded services. Bankers, product designers, accountants, consultants and so on, sell a considerable part of their output to residents of foreign countries.

An economy is said to be more open the larger its exports and imports are relative to GROSS DOMESTIC PRODUCT (GDP). Small countries tend to be more open than large countries. Exports account for over 50 per cent of GDP in a small open economy (such as the Netherlands); in a large country (such as the United States), however, exports account for just over 10 per cent of GDP. Since exports constitute such an important spending category in small open economies, this type of economy is more dependent on international trade than larger and more closed economies. When the growth of world trade slows down, small open economies will immediately face the consequences because their exports (and thus aggregate demand) will also slow down, causing severe macro-economic problems.

Exports depend on spending decisions made by foreign households. Therefore they are autonomous (or exogenous) expenditure from the point of view of the exporting country.